

1 The opinion in support of the decision being entered  
2 today is *not* binding precedent of the Board  
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6 UNITED STATES PATENT AND TRADEMARK OFFICE  
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9 BEFORE THE BOARD OF PATENT APPEALS  
10 AND INTERFERENCES  
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13 *Ex parte* LEONARD R. KILBY, JOHN M. LUCIDO, JOHN D.  
14 LEATHERBEE, and JAMES J. DIVER  
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17 Appeal 2007-1581  
18 Application 10/670113  
19 Technology Center 3700  
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22 Decided: September 25, 2007  
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25 *Before:* WILLIAM F. PATE, III, MURRIEL E. CRAWFORD, and DAVID  
26 B. WALKER, *Administrative Patent Judges.*

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28 CRAWFORD, *Administrative Patent Judge.*  
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31 DECISION ON APPEAL  
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33 STATEMENT OF CASE

34 Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection  
35 of claims 63 and 64. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

36 This case was heard by this panel of the Board on September 13, 2007.

Appellants invented an apparatus for assembling wrapped bakery products into predetermined patterns prior to the loading thereof into bakery trays (Specification 2).

Claims 63 and 64 under appeal reads as follows:

63. A method of assembling wrapped bakery products into predetermined patterns and thereafter transferring the patterns of wrapped bakery products into bakery trays for transport including the steps of:  
providing a grouping apparatus for receiving individual wrapped bakery products;  
arranging groups of between 1 and about 6 wrapped bakery products on the grouping apparatus;  
providing a turntable;  
providing a transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus onto the turntable; and  
arranging a subsequent group of wrapped bakery products on the grouping apparatus during movement of a previous group of wrapped bakery products from the grouping apparatus onto the turntable under the action of the transfer apparatus.

64. A method of forming wrapped bakery products into predetermined pattern thereafter transferring the patterns of wrapped bakery products into bakery trays including the steps of:  
providing a turntable;  
forming a pattern of wrapped bakery products on the turntable;  
providing a transfer apparatus;  
moving patterns of wrapped bakery products directly from the turntable into bakery trays under the action of the transfer apparatus; and  
forming a subsequent pattern of wrapped bakery products on the turntable during movement of a previous pattern of wrapped bakery products into a bakery tray under the action of the transfer apparatus.

The Examiner rejected claim 63 under 35 U.S.C. § 102(b) as being anticipated by Euverard.

The Examiner rejected claim 64 under 35 U.S.C. § 102(b) as being anticipated by Schneider.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Euverard	US 4,522,292	Jun. 11, 1985
Schneider	US 5,317,859	Jun. 07, 1994

Appellants contend that Euverard does not disclose a grouping apparatus for receiving individual wrapped bakery products and a separate transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus to the turntable.

Appellants also contend that Schneider does not disclose the step of moving patterns of wrapped bakery products directly from the turntable into bakery trays.

### ISSUES

The first issue is whether the Appellants have shown that the Examiner erred in finding that Euverard discloses a grouping apparatus for receiving individual wrapped bakery products and a separate transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus to the turntable.

The second issue is whether the Appellants have shown that the Examiner erred in finding that Schneider discloses the step of moving patterns of wrapped bakery products directly from the turntable into bakery trays.

FINDINGS OF FACT

Euverard discloses a method of assembling wrapped bakery products into predetermined patterns including the steps of providing a grouping apparatus for receiving wrapped bakery products. This grouping apparatus comprises the conveyor 21 with conveyor belt 25, grouping gate 27, and gate 68. The bakery products are fed via the conveyor 21 and grouped into groups of four by the grouping gate 27 and the gate 68 (Figs. 1 and 3). The bakery products are then moved from the conveyor 21 to the turntable by a transfer apparatus which comprises conveyor section 47 that includes rollers 48. (Euverard, col. 8, ll. 26-29; Fig. 2). As such, Euverard discloses a grouping apparatus separate from the transfer apparatus. In addition, as the conveyor 21 moves the bakery products to the transfer apparatus and to the turntable, another group of bakery products is moved to the grouping apparatus by conveyor 21 (Euverard Fig. 3; col. 8, ll. 29-32).

Schneider discloses a method of forming wrapped bakery products including the step of moving patterns of wrapped bakery products from a turntable into bakery trays. However, the bakery products are moved from the turntable to a transfer conveying assembly 80 to a loader assembly 110 and then into bakery containers 25 (Figs. 1 and 4A). The bakery products are not moved directly from the turntable into bakery trays.

DISCUSSION

We will sustain the Examiner's rejection of claim 63 because we find that Euverard discloses the claimed grouping apparatus in the form of grouping gate 27, conveyor 21, and gate 68. This grouping apparatus (21, 27, 68) is indeed separate from the transfer apparatus which moves the

1 bakery groups from the grouping apparatus onto the turntable. The transfer  
2 apparatus takes the form the the conveyor section 47 with its associated  
3 rollers.

4 We will not sustain the Examiner's rejection of claim 64 because  
5 Schneider does not disclose the step of moving the bakery products directly  
6 from the turntable to the bakery trays. Rather, Schneider discloses that the  
7 bakery products are moved first to a transfer conveyor assembly, then to a  
8 loader assembly and only then to bakery trays.

9 No time period for taking any subsequent action in connection with  
10 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

11 AFFIRMED-IN-PART  
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